



UNITED STATES PATENT AND TRADEMARK OFFICE

Case Number	Ctry	Sub Case	Action Due	Due Date
2747504679	US		REQ RECONSIDERATION	14-Oct-2004
			REQ RECONSIDERATION	14-Nov-2004

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JONES DAY
51 LOUISIANA AVENUE, N.W.
WASHINGTON, DC 20001-2113

Action REQ
Type: RECONSIDERATION



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SEP 14 2004

Verified

OFFICE OF PETITIONS

In re Application of
Zapushek, John B.
Application No. 09/780,536
Filed: February 12, 2001
Attorney Docket No. 2499-238

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 8, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office action mailed June 23, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on September 24, 2003. A Notice of Abandonment was mailed January 8, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

The instant petition lacks item (1). The Amendment submitted to the Examiner on April 8, 2004 failed to place the above-identified application in prima facie condition for allowance. A proper reply to a

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

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final rejection under 37 CFR 1.113 may be: (1) an amendment, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee); or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Petitioner must submit one of the above documents in order to revive the above-identified application. The Advisory Action issued by the Examiner in enclosed herewith.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Window located at:

U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (703) 306-0482. Any questions after September 28, 2004 should be directed to (571) 272-3206.



Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: DOUGLAS B. MCKNIGHT
800 SUPERIOR AVENUE, SUITE 1400
CLEVELAND, OH 44114



Advisory Action

Application No.

09/780,536

Applicant(s)

ZAPUSHEK, JOHN B.

Examiner

Suzanne Dino Barrett

Art Unit

3676

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a

final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- The period for reply expires ___ months from the mailing date of the final rejection.
- The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION.
See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- A Notice of Appeal was filed on ___. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- The proposed amendment(s) will not be entered because:
 - they raise new issues that would require further consideration and/or search (see NOTE below);
 - they raise the issue of new matter (see Note below);
 - they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

- Applicant's reply has overcome the following rejection(s): ___.
- Newly proposed or amended claim(s) ___ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: ___.
- The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 19-22.

Claim(s) objected to: 2-5 and 12-14.

Claim(s) rejected: 1,6-11,15-18.

Claim(s) withdrawn from consideration: ___.

- The drawing correction filed on ___ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). ____.

10. Other: ____

Suzanne Dino
Barrett
Primary Examiner
Art Unit: 3676

U.S. Patent and Trademark Office
PTOL-303 (Rev. 11-03)
09082004

Advisory Action

Part of Paper No.

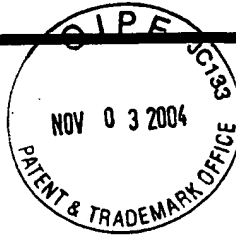
Continuation of 2. NOTE: There are antecedent problems in new claims 23,32, brought on by the changes in language from original claims 1 and 11, which would require further consideration and exr's amdt.



CALFEE, HALTER & GRISWOLD LLP

April 27, 2004

TO: U.S. Patent and Trademark Office
FAX NUMBER: (703) 872-9306
SEND ONLY TO THE ABOVE FAX NUMBER:



CONFIRMATION
PHONE NUMBER:

FROM: Douglas B. McKnight
DIRECT DIAL PHONE NUMBER: 216-622-8200

CLIENT NO.: 27475

MATTER NO.: 04679

CLIENT NAME: Master Lock Company

NUMBER OF PAGES (including this page): 6

MESSAGE:

In re application of:

Zapushek

Serial No.: 09/780,536

Filed: February 12, 2001

For: PIN LOCKING DEVICE & METHOD
OF LOCKING

Examiner: S. Barrett

Group Art Unit: 3676

Confirmation No.: 8389

Tech Center: 3600

Attorney Docket No.: 27475/04679

Per my conversation today with S. Barrett regarding the above application, I'm resending a Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action that was originally sent on February 2, 2004.

This facsimile transmission contains confidential and/or legally privileged information from the law firm of Calfee, Halter & Griswold LLP intended only for the use of the individual(s) named on the transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this facsimile transmission is strictly prohibited. If you have received this transmission in error, please notify us by telephone immediately so that we can arrange for the return of the documents to us at no cost to you.

If there is a problem with this transmission, please contact the Fax Department at: 216/622-8426, 216/622-8428, or 216/622-8522. Facsimiles can be received 24 hours per day, 7 days each week at 216/241-0816. Thank you.

Fax Operator's Initials:

Sent By: _____
Time: _____

Logged By: _____
Time: _____

1400 McDonald Investment Center • 800 Superior Avenue • Cleveland, Ohio 44114-2688 • 216/622-8200
Cleveland Fax Number • 216/241-0816
1650 Fifth Third Center • 21 East State Street • Columbus, Ohio 43215-4243 • 614/621-1500
Columbus Fax Number • 614/621-0010

Serial No.: 09/780,536
Docket No.: 27475/04679
Applicant: Zapushek
Date Filed: February 12, 2001
For: PIN LOCKING DEVICE & METHOD OF LOCKING

Receipt is hereby acknowledged by the Commissioner for Patents for the following:

- Transmittal Form
- Petition to Withdraw Holding of Abandonment based on Failure to Receive Office Action
- Copy of Notice of Abandonment mailed January 7, 2003
- Copy of Revocation of Power of Attorney and Appointment of New Attorney
- Statement of Facts in support of petition
- Return Postcard

Mailed via First Class Mail, postage paid, this 2nd day of February, 2004, to Mail Stop
Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

{LY1583.DOC;1} [130] DBM/ly



Case Number 3747504679 US Action Due Date 03-Jul-2004

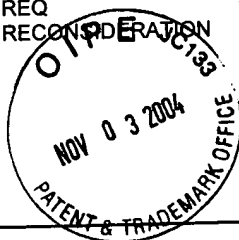
Type: RECONSIDERATION

REQ RECONSIDERATION
REQ RECONSIDERATION

03-Jul-2004

03-Aug-2004

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
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JUN 03 2004

Office of the Director
Group 2000

JONES DAY
51 Louisiana Avenue, N.W.
WASHINGTON DC 20001-2113

In re Application of *27475/4679*
John B. Zapushek
Application No. 09/780,536
Filed: February 12, 2001
For: PIN LOCKING DEVICE AND METHOD
OF LOCKING

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment filed February 6, 2004.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely respond to the final Office action mailed June 23, 2003 and a Notice to that effect was mailed January 7, 2004.

Petitioner states that a Revocation and Power of Attorney/Change of Address was filed on May 20, 2002 and provides a copy of the request along with a postcard receipt stamped May 31, 2002. The petition alleges that the Office erred in mailing the Office action to the wrong address.

A review of the file reveals that the Revocation noted above is not present in the file wrapper. However, even if the request had been entered into the file, it would not have been approved because the request, signed by the "assignee", lacked a statement in accordance with 37 CFR 3.73(b) providing documentary evidence of a chain of title from the original owners to the assignee or a statement specifying where this evidence is recorded in the Office (e.g., reel and frame number).

Since the Revocation/Change of Address cannot be relied upon to show that the Office action was mailed to the incorrect address, the petition for withdrawal of the abandonment on that basis is **DISMISSED**.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.137(a)(2).

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CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$110. The fee for a petition under the unintentional standard is \$1,330. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

By Mail: Deputy Commissioner of Patent Examination Policy
Box 1450
Alexandria, VA 22313-1450

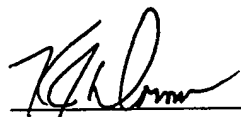
By Fax: (703) 308-6916
Attn: Office of Petitions

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

The application will be forwarded to the Files Repository to await any request for reconsideration applicants may wish to submit.



Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/mjz: 6/1/04

cc:

Douglas B. McKnight, Esq.
Calfee, Halter & Griswold LLP
800 Superior Avenue, Suite 1400
Cleveland, OH 44114-2688

Deposited with the United States Postal Service via First Class Mail, with sufficient postage in an envelope addressed to Mail Stop Petitioner, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313, on this 26th day of July, 2004

In re Application of Zapushek
Serial No.: 09/780,536
Filed: February 12, 2001
For: PIN LOCKING DEVICE & METHOD OF LOCKING
Examiner: S. Barrett
Art Unit: 3676
Confirmation No: 8389
Attorney Docket No.: 27475/04679

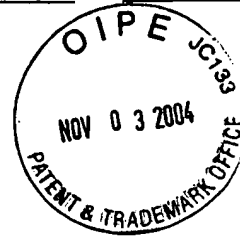
Please acknowledge receipt of:
Petition for Revival of an Application for Patent Abandoned Unintentionally
under 37 CFR 1.137(b) (2 pgs);
Amendment after Final(7 pgs);
Statement of Facts in support of petition (2 pgs);
Copy of Prior Petition and Statement of Facts (6 pgs);
Copy of Decision on Petition (3 pgs);
Check; and
Return Receipt Postcard.
DBM/is

CALFEE, HALTER & GRISWOLD LLP




13 memo

CHECK NO.: 101506

INVOICE DATE	INVOICE NO.	DESCRIPTION	AMOUNT
07-22-04	072204	27475.04679	\$1,330.00



PLEASE DETACH STATEMENT BEFORE DEPOSITING CHECK

 CALFEE, HALTER & GRISWOLD LLP 1400 McDonald Investment Center 800 Superior Avenue Cleveland, OH 44114-2688	 <small>Cleveland, Ohio 56258/412</small>	DATE	CHECK NO.
		07-22-04	101506
		CHECK AMOUNT	
		\$1,330.00	
PAY TO THE ORDER OF ONE THOUSAND THREE HUNDRED THIRTY AND 00/100 Dollar COMMISSIONER FOR PATENTS			
			

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